INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
1. The statutory background	3
2. The facts	6
3. The pleadings	7
4. The decision below	8
Reasons for granting the writ	9
Conclusion	21
Appendix A	23
Appendix B	35

CITATIONS

Cases:

Allen v. *Grand Central Aircraft Co.*, 347 U. S. 535	17
Commissioner v. *Flowers*, 326 U. S. 465	17
Albert S. Goff, 22 Decisions of the Department of Interior in Appealed Pension and Retirement Claims 268	17
Helvering v. *Winmill*, 305 U. S. 79	17
Lambert v. *United States*, 121 C. Cls. 333	7
George Miner, 22 Decisions of the Department of Interior in Appealed Pension and Retirement Claims 79	17
Moncrief v. *Folsom, Secretary of the Department of Health, Education, and Welfare*, C. A. 4, No. 7112, decided April 9, 1956	10
Olney v. *United States*, 123 C. Cls. 285, certiorari denied, 344 U. S. 898	10
Prentiss v. *United States*, 123 C. Cls. 225	8, 9, 10, 18
Shapiro v. *United States*, 335 U. S. 1	17

	Page
Statutes:	
Act of May 22, 1920, 41 Stat. 618, Section 8	3
Act of June 4, 1920, 41 Stat. 759:	
Section 24	14
Section 24b	14
Act of May 29, 1930, Section 3, 46 Stat. 470	12
Act of January 24, 1942, 56 Stat. 15	12
Act of August 31, 1954, 68 Stat. 1004	18, 19
Act of March 31, 1955, Section 2 (1), 69 Stat. 18	6
Career Compensation Act of 1949, 63 Stat. 802:	
Section 201, 37 U. S. C. 232	6, 7, 15
Section 402 (d), 37 U. S. C. 272 (d)	4
Section 411, 37 U. S. C. 281	4
Section 511, 37 U. S. C. 311	4, 5, 13, 36
Civil Service Retirement Act of 1920, as amended (5 U. S. C. 691 ff):	
Section 3	3, 7, 11, 12, 16, 35
Section 4, 5 U. S. C. 698	3
Section 5, 5 U. S. C. 707	4, 7, 16, 18, 35
Section 9, 5 U. S. C. 736b	3, 13, 20
Section 10, 5 U. S. C. 719	3
R. S. 1243	14
R. S. 1244	14
R. S. 1274, 10 U. S. C. (1946 Ed.) 971	5, 14
Social Security Act, Sections 214, 215, as amended, 42 U. S. C. (1952 Ed., Supp. II) 414, 415	20
Miscellaneous:	
88th Cong. Rec., 457	13
H. Rept. 120, 66th Cong., 1st Sess., pp. 1–2, 3–4	3, 18
H. Rept. 1285, 77th Cong., 1st Sess, pp. 3–4	12
Larson, *Payments and Pensions*, New York Times Book Review, April 8, 1956, p. 28	19
36 Op. A. G. 495, 497	17
S. Rept. 99, 66th Cong., 1st Sess, pp. 2–3, 4	3, 18
S. Rept. 921, 77th Cong., 1st Sess., p. 4	12

In the Supreme Court of the United States

OCTOBER TERM, 1955

No.

THE UNITED STATES, PETITIONER

v.

AUBREY H. BOND

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above cause on March 6, 1956.

OPINION BELOW

The opinion of the Court of Claims (App. A, *infra*, pp. 23–26) is reported at 135 F. Supp. 433.

JURISDICTION

The opinion of the Court of Claims directing that entry of judgment be suspended pending the determination of the exact amount due to respondent (App. A, *infra*, p. 26) was entered on November 8, 1955. A timely motion for a new trial was denied on January 31, 1956 (App. A,

infra, pp. 26–27). Judgment was entered on March 6, 1956 (App. A, *infra,* pp. 27–28). The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

A retired Army officer, who was subject while on active duty to the non-contributory Army retirement system and now draws military retirement pay, served in the Army for a period in excess of the span of thirty years and one day necessary to qualify him for his highest military retirement pay. Prior to his Army service, he served for a time in the federal civil service, but he has never made, or been required to make, any contribution to the Civil Service Retirement Fund.

The question presented is whether such a person can obtain a civil service annuity by combining his "excess" period of military service together with his period of non-contributory civilian service so as to form a bloc of years sufficient for an annuity under the Civil Service Retirement Act.

STATUTES INVOLVED

Sections 3 and 5 of the Civil Service Retirement Act and the pertinent parts of Section 511 of the Career Compensation Act of 1949 are set forth in Appendix B, *infra,* pp. 35–37.

STATEMENT

1. The statutory background

a. *Civil Service Retirement.* The Civil Service Retirement Act of 1920, as amended (5 U. S. C. 691 *ff.*, referred to as the Act), establishes a partly contributory retirement system.[1] Pursuant to Section 3 of the Act, App. B, *infra*, p. 35, the Civil Service Retirement System covers "all officers and employees in or under the executive, judicial, and legislative branches of the United States Government * * *" except those *"subject to another retirement system for such officers and employees of the said government* * * *" (emphasis added).

The annuity payable under the Act is computed by multiplying 1½ per centum of the employee's annual salary[2] times the years of service (Section 4 of the Act, 5 U. S. C. 698). The period of service is computed from the date of original employment in the civil service of the United

[1] S. Rept. 99, 66th Cong., 1st Sess., p. 4; H. Rept. 120, 66th Cong., 1st Sess., pp. 3-4. The contributions which originally amounted to 2½ per cent of pay (Section 8 of the Act of May 22, 1920, 41 Stat. 618) now amount to 6 per centum. Section 10 of the Act, 5 U. S. C. 719. No deduction is required for services rendered prior to August 1, 1920, or for periods of honorable service in the armed forces. Section 9 of the Act, 5 U. S. C. 736b, see *infra*, p. 16, fn. 9, and pp. 18–19.

[2] More exactly: "the average annual basic salary * * * received by the officer or employee during any five consecutive years of allowable service at the option of the officer or employee" (Section 4 of the Act, 5 U. S. C. 698).

States; it includes "periods of honorable service in the Army, Navy, Marine Corps, or Coast Guard of the United States" except that "in the case of an officer or employee * * * who is eligible for and receives retired pay on account of military or naval service, *the period of service upon which such retired pay is based shall not be included* * * *." (Section 5 of the Act, App. B, *infra*, pp. 35–36).[3]

b. *Military Retirement.* Pursuant to the Career Compensation Act of 1949, Section 411 (63 Stat. 823, 37 U. S. C. 281), a member of the armed forces, previously retired for physical disability, may elect to receive either (a) *disability retirement pay* pursuant to Section 402 (d), 37 U. S. C. 272 (d), or (b) *retirement pay* computed pursuant to one of the two methods contained in Section 511 (63 Stat. 829, 37 U. S. C. 311).

(i) *Disability retirement pay.* According to Section 402 (d) of the Career Compensation Act (63 Stat. 818–819, 37 U. S. C. 272 (d)), a member of the armed forces retired for disability has two options for the computation of his disability retirement pay. Under the first option, 2½ per cent of the officer's monthly basic pay at the time of his retirement is multiplied by the number of the years of his service—one half year or more of

[3] As we shall show in more detail (*infra*, pp. 17–19), service antedating the passage of the Act can be considered only if the officer or employee has service covered by the Act after its effective date.

service to be counted as a whole year. Under the second option, the monthly base pay is multiplied by the percentage of the officer's physical disability. Under neither option may the disability retirement pay exceed 75 per centum of the basic pay.[4]

(ii) *Retirement pay.* Pursuant to Section 511 of the Career Compensation Act of 1949 (63 Stat. 829, 37 U. S. C. 311, *infra*, pp. 35–36), a retired officer also has two options for computation of his retirement pay. He may elect to continue to receive the retirement pay he was receiving at the time of the effective date of the Career Compensation Act, or he may have his retirement pay computed by a formula substantially identical with the first option governing disability retirement pay (*supra*, pp. 4–5)—2½ per cent of the officers highest salary is to be multiplied by the number of years of service (fractions of one half year or more of active service to count as a full year). Active service in this context means "all service as a member or as a former member of the uniformed services * * *." Again, under either option the retirement pay may not exceed 75 per centum of the basic pay upon which the computation is based.

---

[4] This ceiling of 75 per cent of the active pay goes back at least as far as the Revised Statutes (R. S. 1274).

2. The facts

Respondent is a retired Army colonel (App. A, *infra*, pp. 23–24). He served as a classified civilian employee in the War and Interior Departments from September 15, 1909, to September 9, 1915, *i. e.*, for 5 years, 11 months and 24 days (App. A, *infra*, pp. 23–24). On October 24, 1917, he was commissioned in the Army where he served for a period of 30 years, 5 months and 8 days, until March 31, 1948. On that day, he was retired with the rank of colonel for a service-incurred disability (App. A, *infra*, p. 24). His monthly retirement pay under the law then in effect amounted to $412.50 (R. 151).

After the enactment of the Career Compensation Act of 1949, respondent elected to have his retirement pay computed pursuant to the second option of Section 511. According to this formula (*supra*, p. 5), he was entitled to—and received—2½ per cent of $726.18, monthly pay of a colonel with more than thirty years of service,[5] multiplied by 30, the length of his entire active service (since he had served less than six months in excess of thirty years). Respondent's monthly retirement pay thus amounted to $544.64 under the new formula.

---

[5] Career Compensation Act, Section 201, 63 Stat. 806, 37 U. S. C. (1952 Ed.) 232. (R. 64) These rates have been increased by the Act of March 31, 1955, § 2 (1), 69 Stat. 18.

3. The pleadings

Respondent brought suit in the Court of Claims urging that he is entitled, in addition to his military retirement pay, to a civil service retirement annuity based upon the 5 years, 11 months, and 24 days of his pre-1920 civil service—as to which he has never made any contribution to the Civil Service Retirement Fund, see fn. 1, *supra*, p. 3—and the 5 months and 7 days of the military service which he served in excess of thirty years and one day. His contention was that since his military retirement benefits did not increase after he had served for thirty years and a day, because of the 75 per cent ceiling and the fact that the highest basic pay is for "over thirty years,"[6] his subsequent military service was not "subject to the military retirement system,"[7] and the "extra" five months and seven days did not constitute "a period of service upon which his retired pay was based."[8] Accordingly, he argued that his service during this period—although military

[6] Career Compensation Act, Section 201 (63 Stat. 806, 37 U. S. C. 232) (R. 64). The officer becomes entitled to this pay grade on the first day following the completion of the thirtieth year of service (*Lambert* v. *United States*, 121 C. Cls. 333). For the possibility of an increase of retirement benefits as the result of a promotion see, however, *infra*, pp. 14–15.

[7] Cf. Civil Service Retirement Act, Section 3, 5 U. S. C. 693, *supra*, p. 3.

[8] Cf. Civil Service Retirement Act, Section 5, 5 U. S. C. 707, *supra*, p. 4.

in nature—was not excepted from the Civil Service Retirement Act, and entitled him to a civil service annuity based also on his pre-1920 civilian service.

The Government took the position that respondent had been subject to the military retirement system during the entire period of his military service and that his retirement pay was based upon the entire length of service, even, if due to the 75 per cent ceiling, it did not, as a matter of fact, increase after his completion of thirty years of service. It was also pointed out that Congress intended to cover career military service exclusively by the military retirement system.

4. The decision below

After claimant's motion for judgment on the pleadings (R. 11) and the Government's cross-motion for summary judgment (R. 22), the Court of Claims, adhering to its earlier decision in *Prentiss* v. *United States*, 123 C. Cls. 225 (App. A, *infra*, pp. 28–34), decided in favor of respondent. In *Prentiss*, which involved a similar situation, the Court of Claims had ruled in favor of the claimant, although admitting that "the statutory ensemble is perplexing" and that the statute was "ambiguous" (App. A, *infra*, p. 32).[9] Chief

[9] We did not apply for a writ of certiorari in *Prentiss* mainly because, in our view, the issues had not been thoroughly enough presented to the Court of Claims in that case.

Judge Jones dissented here, as in *Prentiss* (App. A, *infra,* pp. 33–34), where he had pointed out that an officer should not be permitted to:

> * * * draw military retirement on just enough military service to get his highest retirement, apply the excess military service to splice out and afford civilian retirement for which he could not otherwise qualify, and draw both on that basis.
>
> * * * But I do not believe it was the intention of Congress that he might split up the term of his military service in order to qualify for both systems of retirement.

REASONS FOR GRANTING THE WRIT

In adhering to its decision in *Prentiss* v. *United States,* 123 C. Cls. 225 (App. A, *infra,* pp. 28–34), the Court of Claims has decided an important, and to it "perplexing", issue under the Civil Service Retirement Act. The court has granted an annuity under the contributory Civil Service Retirement System to an individual who has never been called upon to contribute to that system and who now receives the full benefits of another federal retirement program. This curious result has been achieved by using the period of service in excess of that needed to qualify under the other system as the basis for coverage under the civil service system, and then combining that "excess" period with a span of civilian federal employment as to which no

contributions have been made into the Civil Service Retirement Fund. The result is an additional pension, wholly gratuitous, to be paid at the expense of those federal employees whose contributions help to make up the Fund. In the *Prentiss* and instant cases, the court's ruling has been applied to Army officers subject to the military retirement system who happen also to have some non-covered pre-1920 civilian service, but the decision's rationale can easily be applied to other military personnel, as well as to the large number of temporary federal employees who have been subject to the Social Security System and do not contribute to the Civil Service Retirement Fund. The immediate and potential impact of the court's erroneous ruling warrant its review and correction by this Court.[9a]

1. Despite its concession that the statutory "ensemble" is "perplexing" and "ambiguous", the court below has granted retirement benefits under a contributory system to persons who never made any contributions and for whom the Government has made other generous and gratuitous retirement provisions. *Prentiss* and the decision below are thus in marked contrast with *Olney* v. *United States,* 123 C. Cls. 285, certiorari denied, 344 U. S. 898, decided on the same day

[9a] See *Moncrief* v. *Folsom, Secretary of the Department of Health, Education, and Welfare*, C. A. 4, No. 7112, decided April 9, 1956, in which Chief Judge Parker, dissenting, states that the majority opinion is contrary to the principle adopted by the Court of Claims in the *Bond* and *Prentiss* cases.

as *Prentiss,* where the Court of Claims held that in the case of an ambiguity the Retirement Act should not be construed so as to permit such a windfall (see 123 C. Cls. at 299, 301). Moreover, we believe that there is no ambiguity in the legislation and that the error in the decision below is apparent.

a. According to the basic coverage provision of the Civil Service Retirement Act, Section 3, App. B, *infra*, p. 35, "all officers and employees" of the Government are covered by the Act *except* those who are "subject to another [governmental] retirement system." Respondent is concededly a beneficiary of the military retirement system. It would follow from a plain and unaffected reading of the Act that he is therefore "subject to another retirement system" and his military service is in no way covered by the Civil Service Retirement System.

The court below, however, following respondent's suggestion, complicated this simple statutory plan by placing an unwarranted gloss upon the term "subject to another retirement system." The argument is that, inasmuch as military service after his thirtieth year did not increase respondent's military retirement benefits, he was not, with respect to that "excess period," *subject* to the military retirement system. The simple word "subject" is contorted into meaning "performs such services as will result in increased benefits under another retirement system." There is

nothing to support this strained interpretation; rather, it is clear that the *proviso* was expressly and simply designed to except from the civil service system those persons, like Army officers, whose service is covered by another federal program.

Prior to 1942, a retired career soldier could not possibly make the contention respondent is making now. Up to then, the Civil Service Retirement System was limited to enumerated groups of government employees, which did not include career soldiers.[10] The Act of January 24, 1942, 56 Stat. 15, amended Section 3 (App. B, *infra*, p. 35) so as to include all officers and employees of all three branches of the Government except those who were subject to another governmental retirement system. It is evident from the legislative history of that amendment that Congress considered career military personnel adequately provided for under their own retirement system, and that the change was not intended to bring any period of career military duty within the Civil Service Retirement System. The pertinent committee reports both state that "coverage will not apply to those already subject to another retirement act."[11] As examples of such other retirement systems the reports point to the Foreign Service Retirement System, and stress the fact

[10] Cf. Act of May 29, 1930, Section 3, 46 Stat. 470.

[11] S. Rept. 921, 77th Cong., 1st Sess., p. 4 (R. 75–76) and H. Rept. 1285, 77th Cong., 1st Sess., pp. 3–4.

that officers of the armed forces "receive 75 per cent of their final pay at the time of retirement." Again, when during the debate in the Senate Senator McKellar voiced a fear that, as the result of the amendments, Army or Navy officers might receive annuities under the Act without having made any contribution to the Civil Service Retirement System,[12] Senator Byrd, a member of the subcommittee which had been in charge of the bill, stated categorically (88 Cong. Rec. 457):

> * * * The Senator's reference to Army and Navy officers has no significance because they are not under the retirement system.

Congress thus left little doubt that it intended completely to except career military service from the coverage of the Civil Service Retirement System.

b. In addition, a necessary corollary of respondent's claim is that his military retirement pay is not based upon the entire period of his military service but only on the first thirty-years-plus-one-day. This position is in direct conflict with the statutory language. According to the Career Compensation Act, Section 511, App. B, *infra*, pp. 36–37, his retirement pay is not founded

[12] According to Section 9 of the Act no contributions are required for periods of honorable military service. *Supra*, p. 3, fn. 1.

on his first thirty years but, subject to the 75 per cent ceiling, upon the "number of years of active service creditable to him" and "active service" means "*all* service as a member or as a former member of the uniformed services * * *"[13] [emphasis added].

Nor can it be said that respondent's retirement pay became absolutely frozen on the day following the completion of his thirtieth year of service. A subsequent promotion in rank would have increased his base pay and consequently his retirement pay. If, following the court below, we consider as "excess periods" all that time with respect to which a retired officer did not *as a*

---

[13] The argument that the 75 per cent ceiling on retirement pay is based upon 30 years of service, each of which entitles the officer to 2½ per cent credit toward retirement, apart from being refuted by the statutory language, puts the cart before the horse. Under R. S. 1274, 10 U. S. C. (1946 Ed.) 971, which was in force until repealed by the Career Compensation Act of 1949, retirement pay was uniformly 75 per cent of the pay of the rank at which the officer retired, regardless of the ground of retirement which could have been physical disability, age, or length of service (40 years of service (R. S. 1243), 30 years of service (R. S. 1243), 45 years of service (R. S. 1244)). The concept of 2½ per cent credit per year of active service is of much more recent origin. It seems to have been utilized first in the Act of June 4, 1920, Section 24b, 41 Stat. 773; note, however, that under Section 24 of the same Act (41 Stat. 771) certain officers were given 4 per cent credit per annum. In either case, retirement pay was subject to the 75 per cent limit. And as we have shown, *supra*, pp. 4–5, the same ceiling applies to retirement pay, based upon the percentage of disability, a factor which bears no relation whatever to the length of service.

matter of fact get an increase in retirement pay, an utterly unworkable interpretation of the statute results. If a colonel were promoted to brigadier general after 34 years of service, he would have been, according to the court's theory, outside the military retirement system for four years, subjected to it retrospectively upon his promotion, and outside of it again until his final retirement, unless he received another promotion. An interpretation of the Act under which coverage for a given period cannot be determined in advance or at least currently is not likely to be correct.

Moreover, the notion that a period of service is "subject" to the retirement system only if there is a commensurate increase in retirement benefits would not be limited to service in excess of thirty years; it would apply to the service of virtually every retiring career soldier. As we have noted, *supra,* pp. 4–5, retirement benefits are not computed on the actual days of service, but increase in brackets depending on the biennial or quadrennial increases in base pay [14] and the years of service, fractions of a year to be counted as a full year.[15] A colonel retiring after 29 years and 180 days of service receives exactly the same retirement benefits as a colonel retiring after 28 years and 190 days. Under respondent's theory, those 355 days of military duty are "excess" serv-

[14] Cf. Career Compensation Act, Section 201, 63 Stat. 806, as amended 37 U. S. C. 232. R. 64.

[15] Career Compensation Act, Section 511, *infra*, pp. 36–37.

ice subject to the Civil Service Retirement System.

c. Similar considerations apply to the argument that the last 5 months and 7 days of respondent's military service were not "a period of service upon which his retired pay was based" within the purview of Section 5 of the Civil Service Retirement Act (App. B, *infra*, p. 36), and may therefore be counted toward a civil service annuity. First it should be noted that one can reach Section 5, which deals with creditable service, only after it has been determined that the retiring officer or employee is actually covered by the basic Section 3 of the Act.[16] Respondent does not fall in that category (*supra*, pp. 11–13). In any event, as we have also shown (*supra*, pp. 13–16) his retirement pay is based, according to the very words of the statute, upon the entire length of his military service.

d. The notion of "excess" military duty and its rejection for civil service purposes are not novel. Similar contentions, made shortly after

[16] The purpose of Section 5 is plain. It deals with government employees who come within the coverage of the Act by virtue of Section 3. Some of these officers or employees are civil service employees who were non-career soldiers and not entitled to military retirement benefits. They are credited for their military service if they had at least five years of civilian service. On the other hand, civil service employees who had been career soldiers and thus are receiving military retirement benefits are not entitled to credit for such career military service.

the Civil Service Retirement Act had gone into effect, were rejected administratively by the Department of the Interior, then in charge of the administration of the Act, on the ground that "the whole period of his military service formed the basis for the Army retired pay." Cf. *George Miner*, 22 Decisions of the Department of Interior in Appealed Pension and Retirement Claims 79, 80–81 (1925) (R. 44–45);[17] see also *Albert S. Goff*, 22 *ibid.* 268, 271 (1927). The many subsequent amendments and reenactments of the Act carry with them the approval of this administrative interpretation of the statutory language. *Helvering* v. *Winmill*, 305 U. S. 79, 83; *Commissioner* v. *Flowers*, 326 U. S. 465, 469; *Shapiro* v. *United States*, 335 U. S. 1, 16; *Allen* v. *Grand Central Aircraft Co.*, 347 U. S. 535, 545.

2. The fact that respondent had some years of civilian service prior to the enactment of the Civil Service Retirement Act in 1920 clearly does not grant him coverage. The Act has been interpreted consistently as permitting credit for pre-1920 service only if the employee was separated from a position covered by the Act subsequent to its effective date.[18] Thus, pre-1920

[17] "The argument in support of the appeal is purely technical and ignores the broad general policy indicated in this and analogous legislation against granting dual benefits for one service."

[18] See *e. g.*, 36 Op. A. G. 495, 497.

service may be credited to an employee if he had some post-1920 civilian service or military service covered by the Act, *i. e.*, service not subject to another retirement system.[19] But pre-1920 service cannot, in itself, provide the basis for coverage.[20]

This established and accepted interpretation is wholly reasonable and does not result in any undue discrimination against career soldiers. First, the latter are covered by the military retirement system which is far more generous than civil service retirement.[21] Moreover, the reason for giving an employee retiring after 1920 credit for his pre-1920 service lies in the compulsory retirement aspects of the Act, one of the purposes of which was to remove superannuated employees from the federal payroll.[22] Humanitarian considerations required that those

---

[19] The Act of August 31, 1954, 68 Stat. 1004, amending Section 5 of the Act (5 U. S. C. 707), now requires at least one year of creditable civilian service within the two-year period immediately preceding retirement.

[20] In its opinion in *Prentiss*, the Court of Claims does not appear to dispute this contention. The court finds coverage in the post-1920 "excess" military service (see App. A, *infra*, p. 32).

[21] As we have pointed out, *supra*, pp. 4–5, under the noncontributory military retirement system respondent received 2½ per cent credit for each year of service. Under the civil service system an employee who has made substantial contributions receives only 1½ per cent credit per year of service.

[22] S. Rept. 99, 66th Cong., 1st Sess., pp. 2–3; H. Rept. 120, 66th Cong., 1st Sess., pp. 1–2.

who retired during the first years after the Act went into effect should be given benefits measured by the entire length of their service, and not merely by the short time following the effective date of the Act during which they made contributions to the retirement fund. As in any transitional measure regulating the initial stages of a retirement system, windfalls which cannot be shared by all are inescapable.[23]

3. As we have already noted, the importance of these issues is not limited to the case at bar. The Civil Service Commission advises that seven claims similar to those of the respondent have already been presented to it; we do not know how many more instances there may be, particularly of persons who serve a few years in the civil service and then join the career armed services. Moreover, as we have shown (*supra*, pp. 15–16), the principle, squarely accepted by the Court of Claims, that a period of service is not covered by a retirement system unless as a matter of fact it increases the officers' benefits, has wide-ranging potentialities for all career military personnel.

Serious consequences of the court's holding may also arise with respect to the many thousands of temporary government employees who are cov-

[23] Cf. Larson, *Payments and Pensions*, New York Times Book Review, April 8, 1956, p. 28. The Act of August 31, 1954, 68 Stat. 1004, *supra*, p. 18, fn. 19, seeks to remedy some of the abuses which have come to the attention of Congress.

ered by, and pay contributions to, the Social Security System rather than to the Civil Service Retirement Fund.[24] Under social security, the benefits cease to increase after the employee has become a "fully insured individual" *i. e.*, after 40 quarters of coverage, and if his earnings exceed $4,200.00 (Social Security Act, Sections 214, 215, as amended, 42 U. S. C. (1952 Ed., Supp. II) 414, 415). It may be argued with the logic of the ruling below that a temporary government employee who has more than 40 quarters of social security coverage, and who earns more than $4,200 per annum, is no longer subject to the Social Security Act, and is thus entitled to civil service retirement benefits.[25] Similarly, it can be contended that non-career veterans of World War II and the Korean episode who take temporary government jobs (subject to the Social Security Act) can combine their military service with their civilian government employment—as to neither of which are contributions made to the Civil Service Retirement Fund—to secure a civil service annuity. The rationale of the Court of Claims' opinion supports such otherwise unfounded claims.

---

[24] The contributions to the Social Security System are far lower than those to the Civil Service Retirement System. It is estimated that some 350,000 federal employees are now covered by the Social Security System.

[25] According to Section 9 of the Civil Service Retirement Act (5 U. S. C. 736b), his benefits merely would be reduced by 10 per centum.

CONCLUSION

For the above reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
PAUL A. SWEENEY,
HERMAN MARCUSE,
Attorneys.

APRIL 1956.